

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LISA MOORE, an individual,

Case No. 2:17-cv-00800

Plaintiff,

VS.

STIPULATED PROTECTIVE ORDER

THE BOEING COMPANY, a Delaware corporation,

Date of Filing: May 23, 2017

Defendant.

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public

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1 disclosure and use extends only to the limited information or items that are entitled to
2 confidential treatment under the applicable legal principles, and it does not presumptively entitle
3 parties to file confidential information under seal.

4 2. “CONFIDENTIAL” MATERIAL

5 “Confidential” material shall include the following documents and tangible things
6 produced or otherwise exchanged:

7 All documents, interrogatory responses, admissions, depositions, other pretrial or trial
8 testimony, medical records, EEO or other Boeing investigative reports, employee performance or
9 disciplinary documents (including but not limited to Corrective Action Memoranda), and other
10 discovery materials produced, served, or given by a party to this litigation, and all third party
11 provider information that is disclosed in connection with a signed authorization or release by a
12 party to this litigation, may be designated by the party producing or authorizing the disclosure of
13 such material or testimony as “Confidential” if they contain information that is reasonably
14 considered by the producing or authorizing party to be proprietary or confidential.

15 In particular, and without limiting the foregoing, Boeing intends to produce documents
16 relating to its policies and procedures, work history, internal complaints, and correspondence,
17 which contain proprietary information, which Boeing considers to be “Confidential.” Boeing
18 may ask Plaintiff to provide medical records and documents related to her claim for damages,
19 which Plaintiff has a reasonable expectation of privacy and which Plaintiff considers to be
20 “Confidential.”

21 3. SCOPE

22 The protections conferred by this agreement cover not only confidential material (as
23 defined above), but also (1) any information copied or extracted from confidential material; (2)
24 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
25 conversations, or presentations by parties or their counsel that might reveal confidential material.

1 However, the protections conferred by this agreement do not cover information that is in the
2 public domain or becomes part of the public domain through trial or otherwise.

3 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
5 or produced by another party or by a non-party in connection with this case only for prosecuting,
6 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
7 the categories of persons and under the conditions described in this agreement. Confidential
8 material must be stored and maintained by a receiving party at a location and in a secure manner
9 that ensures that access is limited to the persons authorized under this agreement.

10 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
11 ordered by the court or permitted in writing by the designating party, a receiving party may
12 disclose any confidential material only to:

13 (a) the receiving party’s counsel of record in this action, as well as employees of counsel
14 to whom it is reasonably necessary to disclose the information for this litigation;

15 (b) the officers, directors, and employees (including in house counsel) of the receiving
16 party to whom disclosure is reasonably necessary for this litigation, unless the parties
17 agree that a particular document or material produced is for Attorney’s Eyes Only and is
18 so designated;

19 (c) experts and consultants to whom disclosure is reasonably necessary for this litigation
20 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

21 (d) the court, court personnel, and court reporters and their staff;

22 (e) copy or imaging services retained by counsel to assist in the duplication of
23 confidential material, provided that counsel for the party retaining the copy or imaging
24 service instructs the service not to disclose any confidential material to third parties and
25 to immediately return all originals and copies of any confidential material;

26 (f) during their depositions, witnesses in the action to whom disclosure is reasonably

1 necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
2 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court.

3 Pages of transcribed deposition testimony or exhibits to depositions that reveal
4 confidential material must be separately bound by the court reporter and may not be
5 disclosed to anyone except as permitted under this agreement;

6 (g) the author or recipient of a document containing the information or a custodian or
7 other person who otherwise possessed or knew the information;

8 (h) a third party neutral retained by the parties to assist in the resolution of the matter.

9 4.3 Filing Confidential Material. Before filing confidential material or discussing or
10 referencing such material in court filings, the filing party shall confer with the designating party
11 to determine whether the designating party will remove the confidential designation, whether the
12 document can be redacted, or whether a motion to seal or stipulation and proposed order is
13 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the
14 standards that will be applied when a party seeks permission from the court to file material under
15 seal.

16 5. DESIGNATING PROTECTED MATERIAL

17 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
18 or non-party that designates information or items for protection under this agreement must take
19 care to limit any such designation to specific material that qualifies under the appropriate
20 standards. The designating party must designate for protection only those parts of material,
21 documents, items, or oral or written communications that qualify, so that other portions of the
22 material, documents, items, or communications for which protection is not warranted are not
23 swept unjustifiably within the ambit of this agreement.

24 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
25 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to

1 unnecessarily encumber or delay the case development process or to impose unnecessary
2 expenses and burdens on other parties) expose the designating party to sanctions. If it comes to a
3 designating party's attention that information or items that it designated for protection do not
4 qualify for protection, the designating party must promptly notify all other parties that it is
5 withdrawing the mistaken designation.

6 5.2 Manner and Timing of Designations. Except as otherwise provided in this
7 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
8 ordered, disclosure or discovery material that qualifies for protection under this agreement must
9 be clearly so designated before or when the material is disclosed or produced.

10 (a) Information in documentary form: (*e.g.*, paper or electronic documents and deposition
11 exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
12 the designating party must affix the word "CONFIDENTIAL" to each page that contains
13 confidential material. If only a portion or portions of the material on a page qualifies for
14 protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by
15 making appropriate markings in the margins).

16 (b) Testimony given in deposition or in other pretrial or trial proceedings: the parties
17 must identify on the record, during the deposition, hearing, or other proceeding, all
18 protected testimony, without prejudice to their right to so designate other testimony after
19 reviewing the transcript. Any party or non-party may, within fifteen days after receiving
20 a deposition transcript, designate portions of the transcript, or exhibits thereto, as
21 confidential.

22 (c) Other tangible items: the producing party must affix in a prominent place on the
23 exterior of the container or containers in which the information or item is stored the word
24 "CONFIDENTIAL." If only a portion or portions of the information or item warrant
25 protection, the producing party, to the extent practicable, shall identify the protected
26 portion(s).

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
2 designate qualified information or items does not, standing alone, waive the designating party's
3 right to secure protection under this agreement for such material. Upon timely correction of a
4 designation, the receiving party must make reasonable efforts to ensure that the material is
5 treated in accordance with the provisions of this agreement.

6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
8 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
10 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
11 challenge a confidentiality designation by electing not to mount a challenge promptly after the
12 original designation is disclosed.

13 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
14 regarding confidential designations without court involvement. Any motion regarding
15 confidential designations or for a protective order must include a certification, in the motion or in
16 a declaration or affidavit, that the movant has engaged in a good faith meet and confer
17 conference with other affected parties in an effort to resolve the dispute without court action.
18 The certification must list the date, manner, and participants to the conference. A good faith
19 effort to confer requires a face-to-face meeting or a telephone conference.

20 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
21 intervention, the designating party may file and serve a motion to retain confidentiality under
22 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
23 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
24 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
25 other parties) may expose the challenging party to sanctions. All parties shall continue to
26 maintain the material in question as confidential until the court rules on the challenge.

1 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
2 OTHER LITIGATION

3 If a party is served with a subpoena or a court order issued in other litigation that compels
4 disclosure of any information or items designated in this action as "CONFIDENTIAL," that
5 party must:

6 (a) promptly notify the designating party in writing and include a copy of the
7 subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to issue in
9 the other litigation that some or all of the material covered by the subpoena or order is subject to
10 this agreement. Such notification shall include a copy of this agreement; and

11 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
12 designating party whose confidential material may be affected.

13 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

14 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
15 material to any person or in any circumstance not authorized under this agreement, the receiving
16 party must immediately (a) notify in writing the designating party of the unauthorized
17 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c)
18 inform the person or persons to whom unauthorized disclosures were made of all the terms of
19 this agreement, and (d) request that such person or persons execute the "Acknowledgment and
20 Agreement to Be Bound" that is attached hereto as Exhibit A.

21 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
22 PROTECTED MATERIAL

23 When a producing party gives notice to receiving parties that certain inadvertently
24 produced material is subject to a claim of privilege or other protection, the obligations of the
25 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
26 provision is not intended to modify whatever procedure may be established in an e-discovery

1 order or agreement that provides for production without prior privilege review. Parties shall
2 confer on an appropriate non-waiver order under Fed. R. Evid. 502.

3 10. NON TERMINATION AND RETURN OF DOCUMENTS

4 Within 60 days after the termination of this action, including all appeals, each receiving
5 party must return all confidential material to the producing party, including all copies, extracts
6 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
7 destruction.

8 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
9 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
10 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
11 work product, even if such materials contain confidential material.

12 The confidentiality obligations imposed by this agreement shall remain in effect until a
13 designating party agrees otherwise in writing or a court orders otherwise.

14 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

1 Dated: August 4, 2017

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12 LISA MOORE

13 Dated: August 4, 2017

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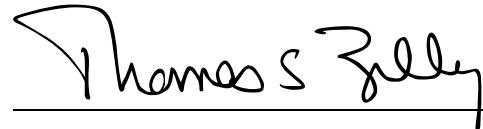
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28 Attorneys for Defendant
29 THE BOEING COMPANY

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1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
3 documents in this proceeding shall not, for the purposes of this proceeding or any other
4 proceeding in any other court, constitute a waiver by the producing party of any privilege
5 applicable to those documents, including the attorney-client privilege, attorney work-product
6 protection, or any other privilege or protection recognized by law.

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8 DATED this 16th day of August, 2017.

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12 Thomas S. Zilly
13 United States District Judge
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EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

3 I, _____ [PRINT OR TYPE FULL NAME],
4 of _____ [PRINT OR TYPE FULL ADDRESS], declare
5 under penalty of perjury that I have read in its entirety and understand the Stipulated Protective
6 Order that was issued by the United States District Court for the Western District of
7 Washington on _____ [DATE] in the case of *Lisa Moore v. The Boeing*
8 *Company*, USDC Case No. 2:17-cv-00800. I agree to comply with and to be bound by all the
9 terms of this Stipulated Protective Order and I understand and acknowledge that failure to so
10 comply could expose me to sanctions and punishment in the nature of contempt. I solemnly
11 promise that I will not disclose in any manner any information or item that is subject to this
12 Stipulated Protective Order to any person or entity except in strict compliance with the
13 provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the
15 Western District of Washington for the purpose of enforcing the terms of this Stipulated
16 Protective Order, even if such enforcement proceedings occur after termination of this action.

17 Date: _____

18 City and State where sworn and signed: _____

19 Printed name: _____

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